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| 09/936,820 | 10/23/2001 | Lars Johnsen | 66386-372-7 | 1479 |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/936,820
Filing Date: October 23, 2001
Appellant(s): JOHNSEN, LARS

MAILED
NOV 24 2006
Group 3700

Richard Tushin (Reg. No. 27,297)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 14, 2006 appealing from the Office action mailed December 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

Art Unit: 3781

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|--------------|----------|---------|
| 4,473,163 | GEIGER | 25-1984 |
| 3,006,493 | ACTON | 10-1961 |
| 5,839,592 | HAYES | 11-1998 |
| GB 2,122,178 | LECINSKI | 01-1984 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 49 and 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. 4,473,163) in view of Lecinski (GB 2,122,178) and Acton (U.S. 3,006,493). Geiger teaches a lid assembly 1 comprising an outer lid 2 and an inner lid 3. The outer lid consists of a top part between

Art Unit: 3781

lead lines 17 and 18, a cylindrical collar at 24, threads 5 and 6, and a single inwardly extending protrusion 23b. Geiger does not teach the third layer of the inner lid nor does Geiger teach the inner lid being planar. Lecinski teaches that it is known to provide an inner lid with a third layer having a lower friction coefficient (see lines 47-52 of page 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid assembly of Geiger with the inner lid having a third layer, as taught by Lecinski, in order to protect the metal.

Geiger teaches that the inner lid can be substantially planar, as shown in figure 8. Acton teaches that it is known to provide a inner lid which is planar (see element 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid assembly of Geiger with the inner lid being completely planar, as taught by Acton, in order to simplify the manufacturing process by eliminating more complicated outlines.

The outer lid of Geiger also includes protrusions 23a, c and d. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid assembly of Geiger without protrusions 23a, c and d, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

(B) Claims 49 and 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. 4,473,163) in view of Hayes (U.S. 5,839,592) and Acton (U.S. 3,006,493). Geiger teaches a lid assembly 1 comprising an outer lid 2 and an inner lid 3. The outer lid consists of a top part between lead lines 17 and 18, a cylindrical collar at 24, threads 5 and 6, and a single inwardly extending protrusion 23b. Geiger does not teach the third layer of the inner lid nor does Geiger teach the inner lid being planar. Hayes teaches that it is known to provide an inner lid with a third layer having a lower friction coefficient (see col. 4 lines 9-20). It would have been obvious to one having ordinary skill in the art at the time the

Art Unit: 3781

invention was made to provide the lid assembly of Geiger with the inner lid having a third layer, as taught by Hayes, in order to protect the metal.

Geiger teaches that the inner lid can be substantially planar, as shown in figure 8. Acton teaches that it is known to provide a inner lid which is planar (see element 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid assembly of Geiger with the inner lid being completely planar, as taught by Acton, in order to simplify the manufacturing process by eliminating more complicated outlines.

The outer lid of Geiger also includes protrusions 23a, c and d. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid assembly of Geiger without protrusions 23a, c and d, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

(C) Claims 41-48 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger in view of Hayes and Acton, as applied to claim 55 above, and further in view of Osip et al. (U.S. 4,991,731). The modified lid assembly of Geiger discloses the claimed invention except for the metal being aluminum. Osip teaches that it is known to provide an inner lid with aluminum (see col. 4 lines 53-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid assembly of Geiger with the metal being aluminum, as taught by Osip, to give the inner lid the rigidity characteristic of aluminum.

Regarding claims 42 and 43, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid assembly of Geiger with the first layer being low density polyethylene, as taught by Hayes (col. 4 lines 21-30), to allow the first layer to conform to any irregularities of the container opening.

Art Unit: 3781

Regarding claims 44-48, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid assembly of Geiger with the third layer being polyethylene, as taught by Hayes (col. 4 lines 9-20), to protect and provide additional strength to the inner lid.

(10) Response to Argument

(A) Claims 49 and 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. 4,473,163) in view of Lecinski (GB 2,122,178) and Acton (U.S. 3,006,493)

Appellant argues that “there is no reasonable ‘teaching’ in Lecinski that would suggest applying another layer to the inner cap 3 of Geiger”. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F. 2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). The motivation and reasonable teaching to modify the primary reference of Geiger is not only based on common knowledge and common sense of the person of ordinary skill in the art, but also is found in the secondary reference of Lecinski. Specifically, Lecinski discloses that the layer 38 has a low coefficient of friction and is a “protective coating” to the metal layer. For this reason the modification of Geiger using the teachings of Lecinski is considered proper.

Appellant argues that the inner lid of Acton does not appear to be planar. The examiner disagrees with this position because the drawings of Acton clearly show an inner lid 6 that is completely planar. It has been held that in a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and

Art Unit: 3781.

suggest to one of ordinary skill in the art. *In re Aslanian*, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). It is the examiner's position that making the inner lid of Geiger planar (ie. omitting the downwardly extending rim shown figure 8) is completely obvious especially when reviewing the patent of Acton. Motivation was provided in the rejection to support the modification.

(B) Claims 49 and 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (U.S. 4,473,163) in view of Hayes (U.S. 5,839,592) and Acton (U.S. 3,006,493).

Regarding the Hayes reference, Appellant argues that there is no reason to add an oxygen barrier to the inner lid. The modification of Geiger in view of Hayes **does not** include the addition of an additional oxygen barrier layer. Both Geiger and Hayes teach a middle layer (3 of Geiger and 43 of Hayes) of metal. The modification in the rejection calls for the addition of a third layer to the inner lid of Geiger. The third layer would cover the metal layer 3 of Geiger and is taught by the third layer 41 of Hayes which covers the middle layer 43 of Hayes.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

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